

Dated: August 1, 1995.

Solly Thomas,

Executive Director, Federal Labor Relations Authority.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 95-046-1]

Importation of Fruits and Vegetables; Phytosanitary Certificates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) is soliciting public comment on a change we are considering making to the fruits and vegetables import regulations. We are considering requiring a phytosanitary certificate to accompany all shipments of imported produce, both commercial shipments and produce brought into the United States by individual travelers. We believe this change would substantially increase our ability to exclude dangerous plant pests associated with produce from the United States, but it would also require substantial changes in the practices of travelers and importers who bring produce into the United States.

DATES: Consideration will be given only to comments received on or before October 3, 1995.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95-046-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 95-046-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Ms. Jane Levy or Mr. Frank E. Cooper, Senior Operations Officers, Port Operations, PPQ, APHIS, Suite 4A03, 4700 River Road Unit 139, Riverdale, MD 20737-1236; (301) 734-8645.

SUPPLEMENTARY INFORMATION:

Background

The Plant Quarantine Act (7 U.S.C. 151 *et seq.*) and the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*) authorize the Animal and Plant Health Inspection Service (APHIS) to prohibit or restrict the importation into the United States of any plants, roots, bulbs, seeds, or other plant products, including fruits and vegetables, to prevent the introduction of plant pests into the United States. "Subpart—Fruits and Vegetables" (7 CFR 319.56 *et seq.*) contains restrictions on the importation into the United States of fruits, vegetables, and plants or portions of plants used as packing material in connection with shipments of fruits and vegetables.

A phytosanitary certificate is a document issued by a plant protection official of a national government that is issued to facilitate the international movement of a plant or plant product article. A phytosanitary certificate certifies that the article has been thoroughly inspected, is believed to be free from injurious plant diseases, injurious insect pests, and other plant pests, and is otherwise believed to be eligible for importation into the country of destination pursuant to the current phytosanitary laws and regulations of that country. A phytosanitary certificate may also contain additional declarations regarding the area of origin, conditions of growth, or treatment of the article, when such information is relevant to the eligibility of the article for importation. The form and use of phytosanitary certificates is governed by the International Plant Protection Convention.

Phytosanitary certificates are in wide use in international trade. APHIS issues thousands of phytosanitary certificates each year to facilitate export of United States agricultural products to countries that require phytosanitary certificates to accompany such products. We also require many agricultural products imported into the United States to be accompanied by phytosanitary certificates.

For example, phytosanitary certificates are required for restricted articles under 7 CFR 319.37 *et seq.*, "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products," and under 7 CFR 319.75 *et seq.*, "Subpart—Khapra Beetle."

Phytosanitary Certificate Requirement for All Imported Produce

We are considering requiring a phytosanitary certificate to accompany all shipments of imported produce, both commercial shipments and produce

brought into the United States by individual travelers.

Historically, we have not required a phytosanitary certificate for imports of fresh produce because, given the volume of produce entering the United States, we felt that we could provide adequate protection for U.S. agriculture by having well-trained United States Department of Agriculture (USDA) personnel inspect all imported produce. Port of entry inspection by our officers was, and continues to be, an important safeguard to which all imported produce is subject.

Today, from the standpoint of quarantine control, the picture of produce importations is changing dramatically. The number of foreign travelers continues to increase. The amount of produce they bring with them likewise continues to increase, and the pest risk inherent in such importations may well have increased. Commercial importations also continue to increase in quantity and variety of product.

At the same time, foreign Ministries of Agriculture are increasingly able to provide phytosanitary export inspection and certification. We believe that the availability and overall quality of these activities has improved, partly as a result of our International Services programs abroad.

Imported produce presents a relatively high risk of introducing exotic plant pests. Produce brought by travelers is particularly dangerous because:

- The origin of the produce is often difficult to determine.
- The produce is often grown in dooryards with little or no pest control.
- Travelers bring noncommercial varieties with unknown susceptibility to pests and diseases.
- The fruits are often ripe or overripe and therefore particularly susceptible to infestations.
- Historically, decisions to allow importation of produce were based on an evaluation of the pest risk associated with commercial production, not backyard production.

In addition to the above, we now face increasing restrictions on the number of personnel we can devote to inspecting produce imports. It appears that these restrictions will be of long duration if not permanent. We are finding it increasingly difficult to provide the level of quarantine security we feel is needed. To a significant extent, a phytosanitary certificate requirement is an effective augmentation to inspection.

The phytosanitary certificate requirement would provide a significant measure of protection against the introduction of exotic plant pests. This

requirement would represent a significant change from current practice. Therefore, if we make this change we would conduct an intensive public relations campaign to alert importers and travelers to the new requirement and encourage compliance. Compliance with this new phytosanitary certificate requirement should significantly reduce the infestation levels in both commercial and non-commercial importations.

As we see it, these are the positive effects of a phytosanitary certificate requirement:

- The quantity of produce brought by travelers would be curtailed, resulting in far fewer infested lots of produce being imported from dooryard gardens and infested countries, thereby reducing the risk of pest introduction.

- Commercial and noncommercial importations would have the added safeguard of a foreign issued phytosanitary certificate, which would certify that the produce was inspected and found to comply with our requirements. The phytosanitary certificate could also be the focal point of APHIS's feedback to countries that inadvertently certify prohibited or infested produce.

- The requirement would be legally sound, based on the Agency's statutory authority, and be in accord with the International Plant Protection Convention.

The negative effects for which we must plan are:

- Despite a public relations campaign, there would be numerous complaints from travelers about seized produce, especially during the first year of enforcement.

- APHIS would have to prepare for increased smuggling because the phytosanitary certificate requirement would essentially prohibit produce brought by travelers.

- All countries shipping produce to the United States would have to provide phytosanitary certificates for all shipments. These countries might have difficulties dealing with the increased workload, and effects might include increases in the number of errors and improperly issued phytosanitary certificates. Importers might assume that improperly issued phytosanitary certificates authorize them to import prohibited produce.

- APHIS would have to prepare guidelines for enforcement of the new requirements.

The phytosanitary certificate requirement would have a strong effect on movements into the United States from Canada and Mexico. In particular, local residents bring a large quantity of

produce across the Mexican border as groceries for local consumption in the United States. Along the border, these groceries are known as "mandado".

If a phytosanitary certificate requirement is imposed, all fruit and vegetable mandado would be subject to it. However, the current systems for issuing phytosanitary certificates in Mexico do not make it feasible for customers in retail stores and fruit and vegetable stands to obtain certificates so that they could legally bring their purchases into the United States. Therefore, unless the system for issuing certificates in Mexico changes significantly, imposition of a phytosanitary certificate requirement would mean that persons would be unable to practically and legally import mandado into the United States. Based on our many years' experience in examining mandado on the Mexican border, we believe that admissible fruits and vegetables in mandado do not present a significant pest risk. We also recognize that the phytosanitary certificate requirement could result in inconvenience and increased costs for thousands of persons who daily bring Mexican fruits and vegetables across the border for consumption in the United States.

A somewhat similar situation might apply with regard to the Canadian border, although there is less traffic of this sort from Canada. We welcome suggestions on how to accommodate movements for local consumption from Canada and Mexico without sacrificing quarantine effectiveness. We also welcome comments on any other issue related to a possible proposal to require phytosanitary certificates to accompany all produce imported into the United States.

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151-167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 27th day of July 1995.

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

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7 CFR Part 319

[Docket No. 94-116-4]

Importation of Fresh Hass Avocado Fruit Grown in Michoacan, Mexico; Public Hearings

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public hearings.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service is hosting five public hearings on the proposed rule on the importation of fresh Hass avocado fruit grown in Michoacan, Mexico, that we published in the **Federal Register** on July 3, 1995.

DATES: The public hearings will be held in Washington, DC, on August 17 and 18, 1995; in Flushing, NY, on August 22, 1995; in Homestead, FL, on August 23, 1995; in Chicago, IL, on August 28, 1995; and in Escondido, CA, on August 30 and 31, 1995. Each public hearing will begin at 9 a.m. and is scheduled to end at 5 p.m.

ADDRESSES: The public hearings will be held at the following locations:

1. Washington, DC: Jefferson Auditorium, U.S. Department of Agriculture, South Building, 14th Street and Independence Avenue SW., Washington, DC.
2. Flushing, NY: Best Western Midway Hotel, 108-25 Horace Harding, Flushing, NY.
3. Homestead, FL: Redland Country Club, 24451 SW. 177th (Crone) Avenue, Homestead, FL.
4. Chicago, IL: Holiday Inn—O'Hare International, 5440 North River Road, Chicago, IL.
5. Escondido, CA: California Center for the Arts, 340 North Escondido Boulevard, Escondido, CA.

FOR FURTHER INFORMATION CONTACT: Mr. Victor Harabin, Head, Permit Unit, Port Operations, PPQ, APHIS, 4700 River Road Unit 136, Riverdale, MD 20737-1236, (301) 734-8645, or FAX (301) 734-5786.

SUPPLEMENTARY INFORMATION: Five public hearings will be held on the notice of proposed rulemaking on the importation of fresh Hass avocado fruit grown in Michoacan, Mexico, published by the Animal and Plant Health Inspection Service (APHIS) in the **Federal Register** on July 3, 1995 (60 FR 34831-34842, Docket No. 94-116-3). The first public hearing will be dedicated exclusively to the scientific basis for that proposed rule. This first hearing will be open to the public, but participation will be limited to experts in the fields of pest risk assessment and pest risk mitigation measures. Four additional hearings will be held to provide a full opportunity to all interested parties to address every aspect of the proposed rule.

The First Public Hearing—Presentations by Experts in Risk Assessment

The first public hearing, on the scientific basis for this proposed rule, is